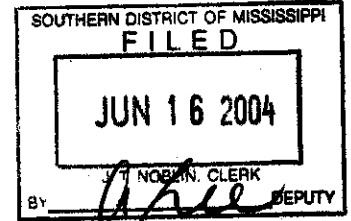


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION



KELVIN BURTON
and TERRANDANCE DOBBINS

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2:04cv186R

CHRISTOPHER B. EPPS, *et al.*

DEFENDANTS

ORDER REQUIRING SEPARATE COMPLAINTS

BEFORE THE COURT is plaintiffs' complaint filed on June 1, 2004, under Title 42 U.S.C. § 1983. The court is of the opinion that plaintiffs must file separate complaints for the reasons set forth below.

These two plaintiffs filed a joint complaint alleging violations of their civil rights relating to their serious medical needs. Each plaintiff completed a separate application to proceed in forma pauperis. The plaintiffs also provided individual information concerning their participation in the administrative remedies program.

I.

It is well settled that "a section 1983 claim must be based upon the violation of plaintiff's personal rights, and not the rights of someone else." Archuleta v. McShan, 897 F.2d 495, 497 (10th Cir. 1990) (citations omitted); Coon v. Ledbetter, 780 F.2d 1158, 1160-61 (5th Cir. 1986) ("[L]ike all persons who claim a deprivation of constitutional rights," each plaintiff is "required to prove some violation of [his] personal rights." Coon, 780 F.2d at 1160-61 (citations omitted). Meritorious claims may be obscured by the frivolous. Moreover, multi-plaintiff prisoner complaints present a variety of administrative and logistical problems not associated with other civil actions.

II.

As a result of the enactment of the Prison Litigation Reform Act of 1995, the court has implemented a number of procedures that facilitate the prison litigation process. If the court were to permit multi-plaintiff prisoner complaints, however, such a practice would render those court procedures inefficient. For example, prisoner plaintiffs proceeding in forma pauperis ("IFP") are required to pay the full amount of the filing fee¹ and costs². Prisoner plaintiffs who have, on three or more prior occasions, brought frivolous or malicious complaints or complaints which failed to state a claim, may not proceed IFP.³

III.

With these concerns in mind, and with the objective of achieving judicial economy and maintaining efficient control of its docket, the court finds it appropriate to sever the recent matter into individual actions, one for each named plaintiff. The present case, civil action number 2:04cv186R, will be dismissed without prejudice.

The Clerk of the Court will be directed to assign a new case number to each individual plaintiff. The Clerk of the Court shall be directed to place copies of the present complaint, application to proceed in forma pauperis and other documents, including this order in each file. Each document shall be filed stamped as of the date of the order. The newly-assigned case number shall be placed upon the copy of the present complaint and other documents and they

¹ 28 U.S.C. §1915(b)(1).

² 28 U.S.C. § 1915(f)(2)(A).

³ 28 U.S.C. § 1915(g)

shall serve as the original documents in the severed action. In the event the court finds that common questions of law or fact exist in separate cases, the court may then order that those cases be consolidated, as provided in Fed. R. Civ. P. 42(a).

Upon assignment of individual case numbers and creation of individual files, the court will make further orders in each case after conducting its review pursuant to 28 U.S.C. § 1915.

IT IS THEREFORE ORDERED:

(1) That civil action no. 2:04cv186R shall be severed into two individual actions, one for each named plaintiff;

(2) That the severed cases shall be captioned as follows:

KELVIN BURTON v. CHRISTOPHER B. EPPS, *et al.*
TERRANDANCE DOBBINS v. CHRISTOPHER B. EPPS, *et al.*

(3) That the Clerk of the Court is directed to assign individual civil action numbers to each of the severed cases;

(4) That the Clerk of the Court is directed to place a copy of the complaint and other documents filed in civil action number 2:04cv186R including this order, in each newly-created file;

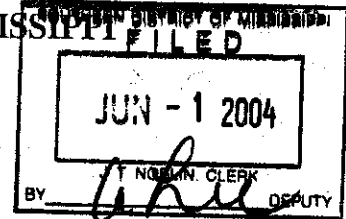
(5) That the complaint and action in civil action number 2:04cv186R is dismissed without prejudice;

SO ORDERED AND ADJUDGED this the 9th day of June, 2004.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

COMPLAINT



Kelvin Burton,
66723,
Terrance
Dobbins, # 85089.
(Enter above the full name of the plaintiff or plaintiffs and prisoner
number of each plaintiff in this action)

COPY

v.

CIVIL ACTION NUMBER: 2:04cv206R
(to be completed by the Court)

Christopher B.
Epps, et al.
Continued on
attached sheet
(Enter above the full name of the defendant or defendants in this action)

OTHER LAWSUITS FILED BY PLAINTIFF

NOTICE AND WARNING:

The plaintiff must fully complete the following questions. Failure to do so may result in your case being dismissed.

- A. Have you ever filed any other lawsuits in a court of the United States? Yes (☒) No (☐)
- B. If your answer to A is yes, complete the following information for each and every civil action and appeal filed by you. (If there is more than one action, complete the following information for the additional actions on the reverse side of this page or additional sheets of paper.)
- Parties to the action: Christopher B. Epps,
Ronald W. King, and Florence Jones
 - Court (if federal court, name the district; if state court, name the county): Southern District
of Mississippi, Hattiesburg Division.
 - Docket Number: 2:03 CV 140 PG.
 - Name of judge to whom case was assigned: Hon. Louis Guirola, Jr.
 - Disposition (for example: was the case dismissed? If so, what grounds? Was it appealed? Is it still pending?):
"Yes, case still pending"

PARTIES

(In item I below, place your name and prisoner number in the first blank and place your present address in the second blank. Do the same for additional plaintiff, if any).

I. Name of plaintiff: Kelvin Burton Prisoner Number: #66723
 Address: South Mississippi Correctional
Institution (S.M.C.I.): P.O. Box
1419 • Lakesville, MS 39451. Continued on back

(In item II below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use the space below item II for the names, positions, and places of employment of any additional defendants.)

II. Defendant: Christopher B. Epps is employed as
Commissioner of MDOC at 723 North
President Street • Jackson, MS 39202
"Continued on separate sheets attached"

The plaintiff is responsible for providing the court the name and address of each plaintiff(s) as well as the name(s) and address(es) of each defendant(s). Therefore, the plaintiff is required to complete the portion below:

PLAINTIFF(S):

NAME:

ADDRESS:

DEFENDANT(S):

NAME:

ADDRESS:

Plaintiff #2

Terrance Dobbins, # R5089

South Mississippi Correctional Institution
(S.M.C.I.) P.O. Box 1419 • Leakesville, MS 39451

Part II. Parties Continued/Plaintiff #2

II. (Plaintiff) Terrance Dobbins, #R5089

Somerset • P.O. Box 1419 • Leesville,

MS • 39451.

Part II. Parties Continued...

Defendants...

The defendants are sued in their individual and warranting official capacities as past and present state officials, agents, administrators, and constitutional authorities, inter alia:

1. M.D.O.C., Christopher B. Epps / Commissioner, who is charged with Department's total operations including the maintenance, care, custody, treatment, and control measure responsibilities, breaches, and constitutional obligations: 723 North President Street. Jackson, Mississippi. 39202.

2. M.D.O.C., "Board of Corrections". John/Dane Doe's, with same responsibilities, duties, and obligations above in their official objective: 723 North President Street. Jackson, Mississippi. 39202.

3. Ronald W. King, Superintendent, who presides over S.M.C.I.'s total operations with the same invested trusts, authorities, and breaches as the Commissioner:

Part II. Parties Continued...

SoMoLoIo • PoDo Box 1419 • Leakesville,
MS • 39451.

4. MoDoLo, Classification Committee,
Florence Jones, who resides over SoMoLo's
total Inmate designations with similar
constitutional authorities mentioned above:
SoMoLoIo • PoDo Box 1419 • Leakesville, Miss-
issippi • 39451.

5. University medical Center (UMC),
John/Jane Doe (Director, Division of Inst-
itutional medicine, who's invested with
compulsory powers, duties, and constitutional
authorities: SoMoLoIo • PoDo Box 1419 • Leakes-
ville, MS • 39451.

6. Mississippi Department of Public
Health, John/Jane Doe, who's invested with
compulsory Interventional powers, interests
and various constitutional responsibilities:
SoMoLoIo • PoDo Box 1419 • Leakesville,
MS • 39451.

Part II. Parties Continued...

7. Jane Doe ("C") Harrison, the RN To Be
nurse, subordinate with duties invested through
the constitution: Smolo I. • P.O. Box 1419 •
Leakesville, MS 39451.

8. Correctional Medical Systems (CMS),
M.D. Jerry Welch, (Smolo I. Physician/Medical
Director): Smolo I. • P.O. Box 1419 • Leakes-
ville, MS • 39451.

Parties/Plaintiff, #I. Kelvin Burton, #66723

ADMINISTRATIVE REMEDIES PROGRAM

A. At the time of the incident complained of in this complaint, were you incarcerated because you had been convicted of a crime?

Yes (☒) No (☐)

B. Are you presently incarcerated for a parole or probation violation?

Yes (☒) No (☐)

C. Did you present the facts relating to your complaint in the administrative or grievance procedure in your institution?

Yes (☒) No (☐)

1. If you answer to C is yes,

a. State the date your claims were presented: January 29, 2004.

b. State how your claims were presented. (Written request, verbal request, request for forms)

Administrative Remedy written Request

c. State the result of that procedure. (You must attach a copy of the final result, such as a certificate from the administrator of the Administrative Remedies Program stating that you have exhausted your administrative remedies.)

No relief granted.

2. If you have not filed a grievance, state the reasons: _____

CERTIFICATE

RE: ARP# SMCS 04 135 CLASS: Medical

Inmate states that he has not received a proper medical evaluation; however, SMCJ medical staff states that inmate has received an adequate medical evaluation.

This document is to certify that Inmate Delvin Burton, MSP# 66723, has fulfilled the requirements of the Administrative Remedy Program and is eligible to seek judicial review within 30 days of receipt of the Third Step Response.

A copy of the Third Step Response Form must be attached to this certificate in order to file in either State or Federal Court.

This, the 8 day of April, 2004.

Glenn Spann
Glenn Spann, Administrator
Administrative Remedy Program

Parties/ Plaintiff II - Terrance Dobbins, #B5089

ADMINISTRATIVE REMEDIES PROGRAM

A. At the time of the incident complained of in this complaint, were you incarcerated because you had been convicted of a crime?

Yes (☒) No (☐)

B. Are you presently incarcerated for a parole or probation violation?

Yes (☐) No (☒)

C. Did you present the facts relating to your complaint in the administrative or grievance procedure in your institution?

Yes (☒) No (☐)

1. If you answer to C is yes,

a. State the date your claims were presented: February 5, 2004.

b. State how your claims were presented. (Written request, verbal request, request for forms)

Written request (ARP).

c. State the result of that procedure. (You must attach a copy of the final result, such as a certificate from the administrator of the Administrative Remedies Program stating that you have exhausted your administrative remedies.)

Relief denied: Rejected.

2. If you have not filed a grievance, state the reasons:

MISSISSIPPI DEPARTMENT OF CORRECTIONS

NUMBER Smc1-04-158.

OFFENDER'S RELIEF REQUEST FORM

Type or use ball-point pen.

TO: Rejected First Step Respondent Location

FROM: Terrance Dobbins R5089 Smc1-II LD
Offender's Name and Number Housing Unit

Date of Incident

☐ ACCEPTED. This request comes to you from the Legal Claims Adjudicator. See the attached request from the offender. Please return your response to this office within 10 days of this date.

☒ REJECTED. Your request has been rejected for the following reason(s): Beyond the ability of MDOC To grant relief,

2/26/04

Date

Legal Claims Adjudicator

SECOND STEP (Pink Copies)

On _____ (date), I received a written response to my First Step request. I am not satisfied with this response because _____

Therefore, I am commencing the Second Step by sending the pink copy of this form (ARP-1), the pink copy of the First Step response (ARP-2), to the Superintendent. This request must reach the Superintendent's office within 5 days of my receiving the First Step response.

Date

Signature

THIRD STEP (Light Yellow Copies)

On _____ (date), I received a written response to my Second Step request. I am not satisfied with this response because _____

I am commencing the Third Step by sending the light yellow copy of this form and the light yellow copies of my First and Second responses, to the Commissioner. This request must be sent within 5 days of my receiving the Second Step response.

Date

Signature

INSTRUCTIONS TO OFFENDER: This original is for you to keep.

OFFENDER'S ORIGINAL

Page-3-Bo

STATEMENT OF CLAIM

- III. State here as briefly as possible the facts of your case. Describe how each defendant is involved. Also, include the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of different claims, number and set forth each claim in a separate paragraph. (Use as much space as you need; attach extra sheet if necessary.)

Jurisdiction of this Court, to entertain and dispose of this complaint is invoked and in accord with Federal Rules of Civil Procedures and the provisions of 28 U.S.C. Sections 1331, 1334, 1, 2, 3, 4, 2201 and 2202. This complaint is being prosecuted and controlled under Civil Rights statutes of 42 U.S.C. § 1983 (1988); jurisdiction is further invoked pursuant to 28 U.S.C. § 1821; (Continued on attached sheet)

RELIEF

- IV. State what relief you seek from the court. Make no legal arguments. Cite no cases or statutes.

1. Plaintiffs Kelvin Burton, #66723, and Inmate(s) Terrance Dobbins, #R5089, invoke the pend-ent jurisdiction of this court to hear their state law claims.

(Continued on attached sheet)

Signed this 26th day of May, 20 04

Kelvin Burton

Terrance M. Dobbins
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true and correct.

26th May, 04
(Date)

Kelvin Burton

Terrance M. Dobbins
Signature of plaintiff(s)

REQUEST TO PROCEED *IN FORMA PAUPERIS* AND
DECLARATION IN SUPPORT THEREOF

I, Kevin Burton, #66723, am the plaintiff in the above entitled case and request leave to proceed without being required to prepay fees or costs or give security therefor. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, and that I believe I am entitled to redress.

I declare that the responses which I have made below are true.

1. Are you presently employed? Yes _____ No ✓
 - a. If the answer is yes, state the amount of your salary per month and give the name and address of your employer. _____
 - b. If the answer is no, state the date of last employment and the amount of the salary per month which you received. No
2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession, or form of self-employment? Yes _____ No ✓
 - b. Rent payments, interest, or dividends? Yes _____ No ✓
 - c. Pensions, annuities, or life insurance payments? Yes _____ No ✓
 - d. Gifts or inheritances? Yes _____ No ✓
 - e. Any other sources? Yes ✓ No _____

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months. miscellaneous,

\$20 - \$75 (dollars) bi-monthly /
Every 3-6 months

3. Do you own any cash or do you have money in a checking or savings account? Yes _____ No ✓ (Include any funds in prison accounts)

If the answer is yes, state the total value owned.

4. Do you own any real estate, stocks, bonds, notes automobiles, or other valuable property (excluding household furnishings and clothing)? Yes _____ No ✓

If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support; state your relationship to those person; and indicate how much you contribute their support. NONE

I understand that a false statement or answer to any question in this declaration will subject me to penalties for perjury.

Helvin Burton
Signature of Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 26th day of May, 20 04.

Helvin Burton
Signature of Plaintiff

----- MUST BE COMPLETED BY PLAINTIFF -----

Authorization for Release of Institutional Account Information and
Payment of the Filing Fee

I, Kevin Burton, # 66723
(Name of Plaintiff) (MDOC Number)

authorize the Clerk of Court to obtain, from the agency having custody of my person, information about my institutional account, including balances, deposits and withdrawals. The Clerk of Court may obtain my account information from the past six months and in the future, until the filing fee is paid. I also authorize the agency having custody of my person to withdraw funds from my account and forward payments to the Clerk of Court, in accord with 28 U.S.C. Section 1915.

Kevin Burton
(Signature of Plaintiff)

May 24, 04
(Date)

IT IS PLAINTIFF'S RESPONSIBILITY TO HAVE THE APPROPRIATE PRISON
OFFICIAL COMPLETE AND CERTIFY THE CERTIFICATE BELOW

CERTIFICATE TO BE COMPLETED BY AUTHORIZED OFFICER
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ — 0 —
on account to his credit at the SMCI institution where he is
confined. I further certify that the applicant likewise has the following securities to his credit
according to the records of said institution:

I further certify that during the last six (6) months the
plaintiff's average monthly **balance** was \$ 769.

I further certify that during the last six (6) months the
plaintiff's average monthly **deposit** was \$ 1804.

601-294-5600 ext 1023
TELEPHONE NUMBER OF
OFFICER FOR VERIFICATION

5-24-04
DATE

Danny Robertson
AUTHORIZED OFFICER OF INSTITUTION
Danny Robertson
PRINT NAME OF AUTHORIZED OFFICER

RETURN COMPLETED FORM TO:
U. S. DISTRICT COURT
245 E. CAPITOL ST., ROOM 316
JACKSON, MS 39201

Part III continued (Statement of Claim).

alleging "deliberate indifference" and "discriminatory practices" to their serious medical needs while in custody of the (M.D.O.C.), constitutes cruel and unusual punishment in violation of their Fourth, Eighth, and Fourteenth Amendments to the United States Constitution of America. The plaintiffs seek pendent jurisdiction of this Court to hear their State and Federal law claims and seeks both declaratory relief and judgments against defendants. Plaintiffs further seeks an Injunction order and to recover Punitive and Compensatory damages as well as additional relief requested herein.

CLAIMS.FACTS

1. The plaintiffs alleges that the defendants has "grossly" Failed to implement, adhere, and adopt, equally comprehensive infectious and communicable disease control and prevention programs, policies,

Part III. continued (Statement of Claim).

and procedures that provides education, adequate testing, screening, Facilities, diagnosis, susceptible alternative treatment, equipment, adequate staffing, ventilation, and adequate lighting to protect from persons with communicable diseases and provide the same to persons infected with "Multi-drug Resistance T.B." (Bacillus Infection), who has been left untreated and who appears "Asymptomatic" to primary pulmonary testing of the lungs and larynx systems. 2 That through pervasive patterns of "deliberate indifference and discrimination", the defendants has knowingly and willfully, unnecessarily, unreasonably, and recklessly, denied and withheld readily available medication to treat and overcome Bacillus illness 3 That warrants any state compelling interests or goals met or effectuated to protect the plaintiffs from future harm or disabilities 4

Part III. Continued (Statement of Claim).

That the defendants violated the plaintiffs due process and equal protection rights by failing to uphold their constitutional authorities, duties and obligations.

5. That the defendants knowingly and willfully, unnecessarily, unreasonably, and recklessly, "prolonged and delayed" plaintiffs adequate medical treatment, ultimately decreasing their chances by a 40-60% cure rate of completing susceptible alternative treatment due to the resistance of one or more drugs to treat T.B. Bacillus-illness that has been left untreated.

6. That in light of existing T.B. control and preventive health plan at SmoCo, the defendants knowingly and willfully discriminates against persons infected with multi-drug resistance T.B. ("Bacillus"), deliberately putting them at unpredictable risks of developing and overcoming active T.B. and other life threatening harm/disabilities.

Part III Continued (Statement of Claim)

7. That defendants knowingly and willfully, recklessly and unreasonably, subjected plaintiffs to wanton pain and undue suffering, unnecessarily causing significant and atypical hardships, anxiety, mental anguish, depression, emotional stress, and tangible effects of recidivisms of present and future harm of their health which constitutes cruel and unusual punishment in violation of the Eighth Amendment.

8. That defendants knowingly and willfully, capriciously and discriminately, violated and continues to violate ~~maooco's~~ own policies and procedures, established laws, statutes, and guidelines in both state and Federal constitution through illegal and unlawful practices and customs.

9. That the defendants sadistically and maliciously committed or caused to be committed the wrongs herein.

P-4, III Do

First Cause of Action

By EACH defendant knowingly, willfully, and discriminately, acting under color of law, in their individual and official capacities as state officials who failed in their constitutional responsibilities, duties, and obligations to implement and adhere to legitimate policies and procedures to provide equal and comprehensive infectious and communicable disease and control prevention measures, education, adequate intake testing and screening, facilities, diagnostic treatment, susceptible alternative treatment, equipment, adequate staffing, ventilation and air circulation, and lighting to protect from persons infected with infectious and communicable diseases and equally provided for persons infected with multi-drug resistant *To B* "Bacillus" infection, violates plaintiffs Fourth, Eighth, and Fourteenth Amendment rights.

Second Cause OF Action

By EACH defendant who through pervasive patterns of indifference who unreasonably, unnecessarily, and recklessly withheld, denied, delayed, interfered with, and prolonged plaintiffs readily available drug treatment to vaccinate and overcome the ToBo Bacillus infection that warrants any safety, security, or any compelling state interests of the constitutional systems, its population and employees, constitutes cruel and unusual punishment that by risking foreseeable future harm and disabilities to the plaintiffs violates the Eighth and Fourteenth Amendment.

Third Cause OF Action

By EACH defendant who sadistically and maliciously subjected plaintiffs to infliction of wanton pain, undue suffering,

anxiety, mental anguish, depression, emotional stress, and tangible effects of isolation constitutes cruel and unusual punishment, significant and atypical hardships, that violates the Eighth and Fourteenth Amendments.

Fourth Cause of Action

By EACH defendant who knowingly and willfully disregarded and ignored repeated request for medical treatment, that who failed to advance adequate and necessary medication (vaccination treatment), recklessly decreasing plaintiff's cure rate showed deliberate indifference to their serious medical needs in violation of the Eighth Amendment.

Fifth Cause of Action

By EACH defendant who arbitrarily and capriciously created or caused to be

P-4, III G

created, who authorized and approved illegal, tortamenting, and discriminatory policies, procedures, practises and customs, that who denied and Failed to provide the same adequate and necessary care and treatment to similiary situated Inmates violated plaintiffs due process and equal protection rights secured under the Fourteenth Amendments.

Relief Continued
P-M-IV

2o Plaintiffs request that this case be consolidated and tried before A single Jury.

3o Plaintiffs request that this Court appoint Counsel, expert witnesses, and reasonable Fees.

4o Plaintiffs request that this Court grant an Preliminary Injunction.

5o Plaintiffs request the Court to issue A Declaratory Judgement that the defendants have violated their

P-M, IV

Relief Continued-P4, IV

rights secured by the state and Federal Constitution.

b. Plaintiffs request judgement against EACH defendant in the amount of Eighty-Thousand (\$80,000) dollars Compensatory

Damages.

To Plaintiffs request judgement against EACH defendant in the amount of Fifty Five - Thousand (\$55,000) dollars
Punitive Damages.